Kilbourn, Hallet

Congress and the
District of Columbia

# HALLET KILBOURN

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**The direct tax on the property and privileges of the people of the District of Columbia to the extent of one-half of the expenses of maintaining and improving the seat of the Government of the United States unconstitutional and void, as shown by opinion of the U. S. Supreme Court.**

**Brief Pen Sketches illustrating some of the attractions of the Nation's Capital.**

**The progress and prosperity of the city of Washington prophetically foreshadowed.**

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# HALLET KILBOURN

ON

# CONGRESS AND THE DISTRICT OF COLUMBIA.

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**The Opinions of the Supreme Court of the United States deciding that Congress can only lay a Direct Tax on the Property of the People of the District when such tax is laid in Proportion to the Census of Population as Directed to be taken by the Constitution.**

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**The Present Law of Congress Imposing the Direct Tax "on the Property and Privileges" of the People of the District to the Extent of Fifty Per Cent. of the Expenses for the Maintenance and Improvement of "the Seat of the Government of the United States" Unconstitutional and Void.**

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Often, when the annual appropriation bill of the District of Columbia is taken up for consideration in the House of Representatives, some member arises and antagonizes its passage, asserting that it is both unconstitutional and unwise to appropriate the money of the United States to pay one-half or any considerable portion of the expenses of the government of the District.

They contend that the Constitution, which gives Congress the power to "exercise exclusive legislation in all cases whatsoever over such District," carries with it authority to impose a direct tax upon the citizens and property located within its limits to an extent necessary for the government of such District.

Assuming that these constitutional statesmen are honest and unprejudiced in their assertions, the following historical statements and opinions of the Supreme Court of the United States

are respectfully submitted for the consideration of themselves, their constituents, and all others who may be in doubt as to the constitutional status of the District of Columbia and the people resident therein.

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The selection of a district of territory for the exclusive use of the nation as the seat of the Government of the United States was made necessary by the early experience of the Government in the sessions of Congress of the Confederation. During a session of Congress in Philadelphia, at the close of the Revolution, that body was surrounded and insulted by an insolent body of mutineers of the Continental army and a mob of disorderly persons. Congress applied to the executive authority of Pennsylvania for protection and defence, but the State authorities seemed powerless to render proper aid, and Congress indignantly removed to Princeton, New Jersey, that State promising to protect it from molestation and interference. Subsequently, for greater convenience, Congress adjourned to Annapolis, Maryland.

The general dissatisfaction with the experience in Pennsylvania, and the degrading spectacle of a fugitive Congress, were sufficiently striking to impress upon the people of the nation the necessity of having a permanent seat of Government of the United States over which Congress could exercise exclusive legislative authority. As the result of such sentiment, a provision was embodied in the Constitution providing for such a Federal Capital, and the District of Columbia was finally selected for that exclusive purpose.

A plan for the seat of Government of the United States was created by the Constitution, and its purposes clearly defined, before any Congress of the United States convened.

The Constitution was adopted in convention September 17, 1787.

The term of the Members of the First Congress commenced on March 4, 1789.

The Constitution distinctly sets forth the powers to be exercised by Congress over such district as was to become the seat of Government of the United States.

Therefore, in the Constitution, and not in the acts of Congress,

are located the fundamental principles and powers which were to govern "such district as may, by the acceptance of Congress, become the seat of Government of the United States."

Congress was empowered to select the district, but the Constitution defined the powers of Congress to be exercised after such selection was made. The constitutional provision is as follows: "That Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance by Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State, in which the same shall be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

The District of Columbia was accepted as the permanent seat of the Government of the United States by an act of Congress approved July 16, 1790.

Congress, therefore, became the nation's trustee, empowered by the Constitution to exercise exclusive legislation over the Federal seat of the Government, in trust for the use, benefit, and purposes of the United States and the people thereof. When the District became the Federal Capital the people then residing within its territorial limits were at once merged into the general body politic of the United States, and became amenable to the laws of the nation and entirely relieved from State or local government. And such is the constitutional status of all citizens who have since made this District their residence.

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The powers conferred on Congress by the Constitution, to exercise exclusive legislation over the District of Columbia, are enumerated in that code of plenary authority, and Congress is confined to its provisions as the limit within which it can exercise any legislative power whatever; in verification of which the following exhaustive opinions of the Supreme Court of the United States are herewith appended:

SUPREME COURT OF THE UNITED STATES.

FEBRUARY TERM, 1820.

John Marshall, Chief Justice; Bushrod Washington, William Johnson, Brockholst Livingston, Thomas Todd, Gabriel Duvall, Joseph Story, Associate Justices.

## LOUGHBOROUGH vs. BLAKE, 5 Wheaton, 317.

Congress has authority to impose a direct tax on the District of Columbia, in proportion to the census directed to be taken by the Constitution.

The power of Congress to levy and collect taxes, duties, imposts, and excises, is co-extensive with the territory of the United States.

The power of Congress to exercise exclusive jurisdiction in all cases whatsoever within the District of Columbia, includes the power of taxing it.

This was an action of trespass, brought in the Circuit Court for the District of Columbia, to try the right of Congress to impose a direct tax on that District.

Marshall, C. J., delivered the opinion of the court.

This case presents to the consideration of the court a single question. It is this: Has Congress a right to impose a direct tax on the District of Columbia?

The counsel who maintains the negative has contended that Congress must be considered in two distinct characters. In one character, as legislating for the States; in the other, as a local legislature for the District. In the latter character, it is admitted that the power of levying direct taxes may be exercised; but, it is contended, for District purposes only, in like manner as the legislature of a State may tax the people of a State for State purposes.

Without inquiring at present into the soundness of this distinction, its possible influence on the application in this District of the first article of the Constitution, and of several of the amendments, may not be altogether unworthy of consideration. It will readily suggest itself to the gentlemen who press this argument that those articles which, in general terms, restrain the power of Congress, may be applied to the laws enacted by that body for the District, if it be considered as governing the District in its character as the National Legislature, with less difficulty than if it be considered a mere local legislature.

But we deem it unnecessary to pursue this investigation, because we think the right of Congress to tax the District does not depend solely on the grant of exclusive legislation.

The 8th section of the first article gives to Congress the "power to lay and collect taxes, duties, imposts, and excises," for the purposes thereinafter mentioned. This grant is general, without limitation as to place. It consequently extends to all places over which the Government extends. If this could be doubted, the doubt is removed by the subsequent words, which modify the grant. These words are: "but all duties, imposts, and excises shall be uniform throughout the United States." It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power, then, to lay and collect duties, imposts, and excises may be exercised and must be exercised throughout the United States. Does this term designate the whole or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great Republic, which is composed of States and Territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other. Since then the power to lay and collect taxes, which includes direct taxes, is obviously coextensive with the power to lay and collect duties, imposts, and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States.

The extent of the grant being ascertained, how far is it abridged by any part of the Constitution?

The 20th section of the first article declares that "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers."

The object of this regulation is, we think, to furnish a standard by which taxes are to be apportioned, not to exempt from their operation any part of our country. Had the intention been to exempt from taxation those who were not represented in Congress, that intention would have been expressed in direct terms. The power having been expressly granted, the exception would have been expressly made. But a limitation can scarcely be said to be insinuated. The words used do not mean that direct taxes shall be imposed on States only which are represented, or shall be apportioned to Representatives; but that direct taxation, in its application to States, shall be apportioned to numbers. Representation is not made the foundation of taxation. If, under

the enumeration of a Representative for every 30,000 souls, one State had been found to contain 59,000 souls, and another 60,000, the first would have been entitled to only one Representative, and the last to two. Their taxes, however, would not have been as one to two, but as fifty-nine to sixty. This clause was obviously not intended to create any exemption from taxation, or to make taxation dependent on representation, but to furnish a standard for the apportionment of each on the States.

The 4th paragraph of the 9th section of the same Article will next be considered. It is in these words: "No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

The census referred to is in that clause of the Constitution which has just been considered, which makes numbers the standard by which both Representatives and direct taxes shall be apportioned among the States. The actual enumeration is to be made "within three years after the first meeting of Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct."

As the direct and declared object of this census is to furnish a standard by which "Representatives and direct taxes may be apportioned among the several States which may be included within the Union," it will be admitted that the omission to extend it to the District or the Territories, would not render it defective.

The census referred to is admitted to be a census exhibiting the numbers of the respective States. It cannot, however, be admitted that the argument which limits the application of the power of direct taxation to the population contained in this census is a just one. The language of the clause does not imply this restriction. It is not that "no capitation or other direct tax shall be laid unless on those comprehended within the census hereinbefore directed to be taken," but, "unless in proportion to" that census. Now this proportion may be applied to the District or Territories. *If an enumeration be taken of the population in the District and Territories on the same principle on which the enumeration of the respective States is made, then the information is acquired by which a direct tax may be imposed on the District and Territories, "in proportion to the census or enumeration," which the Constitution directs to be taken.*

*The standard, then, by which direct taxes must be laid, is applicable to this District, and will enable Congress to apportion on it its just and equal share of the burden, with the same accuracy as on the respective States. If the tax be laid in this proportion it is within the very words of the restriction. It is a tax in proportion to the census or enumeration referred to.*

But the argument is presented in another form, in which its

refutation is more difficult. It is urged against this construction that it would produce the necessity of extending direct taxation to the District and Territories, which would not only be inconvenient, but contrary to the understanding and practice of the whole Government. If the power of imposing direct taxes be coextensive with the United States, then it is contended that the restrictive clause, if applicable to the District and Territories, requires that the tax should be extended to them, since to omit them would be to violate the rule of proportion.

We think a satisfactory answer to this argument may be drawn from a fair comparative view of the different clauses of the Constitution which have been recited.

That the general grant of power to lay and collect taxes is made in terms which comprehend the District and Territories as well as the States is, we think, incontrovertible. The subsequent clauses are intended to regulate the exercise of this power, not to withdraw from it any portion of the community. The words in which those clauses are expressed import this intention. In thus regulating its exercise, a rule is given in the 2d section of the first article for its application to the respective States. That rule declares how direct taxes upon the States shall be imposed. They shall be apportioned upon the several States according to their numbers. If, then, a direct tax be laid at all, it must be laid on every State, conformably to the rule provided in the Constitution. Congress has clearly no power to exempt any State from its due share of the burden. But this regulation is expressly confined to the States, and creates no necessity for extending the tax to the District or Territories. The words of the 9th section do not in terms require that the system of direct taxation, when resorted to, shall be extended to the Territories, as the words of the 2d section require that it shall be extended to all the States. They, therefore, may, without violence, be understood to give a rule when the Territories shall be taxed, without imposing the necessity of taxing them. It could scarcely escape the members of the Convention, that the expense of executing the law in a Territory might exceed the amount of the tax. But, be this as it may, the doubt created by the words of the 9th section relates to the obligation to apportion a direct tax on the Territories as well as on the States, rather than the power to do so.

If then the language of the Constitution be construed to comprehend the Territories and the District of Columbia, as well as the States, that language confers on Congress the power of taxing the District and Territories as well as the States. If the general language of the Constitution should be confined to the States, still the 16th paragraph of the 8th section gives to Congress the power of exercising "exclusive legislation in all cases whatsoever within this District."

On the extent of these terms, according to the common understanding of mankind, there can be no difference of opinion; but it is contended that they must be limited by that great principle which was asserted in our Revolution, that representation is inseparable from taxation.

The difference between requiring a continent, with an immense population, to submit to be taxed by a Government, having no common interest with it, separated from it by a vast ocean, restrained by no principle of apportionment, and associated with it by no common feelings; and permitting the Representatives of the American people, under the restrictions of our Constitution, to tax a part of the society which is either in a state of infancy advancing to manhood, looking forward to complete equality so soon as that state of manhood shall be attained, as is the case with the Territories; *or which has voluntarily relinquished the right of representation, and has adopted the whole body of Congress for its legitimate government, as is the case with the District, is too obvious not to present itself to the minds of all.* Although, in theory, it might be more congenial to the spirit of our institutions to admit a Representative from the District, it may be doubted whether, in fact, its interests would be rendered thereby the more secure; and certainly the Constitution does not consider their want of a Representative in Congress as exempting it from equal taxation.

If it were true that, according to the spirit of our Constitution, the power of taxation must be limited by the right of representation, whence is derived the right to lay and collect duties, imposts, and excises within this District? If the principles of liberty and of our Constitution forbid the raising of revenue from those who are not represented, do not these principles forbid the raising it by duties, imposts, and excises, as well as by a direct tax? If the principles of our Revolution give a rule applicable to this case, we cannot have forgotten that neither the Stamp Act nor the duty on tea were direct taxes.

Yet it is admitted that the Constitution not only allows, but enjoins the Government to extend the ordinary revenue system to this District.

If it be said that the principle of uniformity, established in the Constitution, secures the District from oppression in the imposition of indirect taxes, *it is not less true that the principle of apportionment, also, established in the Constitution, secures the District from any oppressive exercise of the power to lay and collect direct taxes.*

After giving this subject its serious attention, the court is unanimously of opinion that Congress possesses, under the Constitution, the power to lay and collect direct taxes within the District of Columbia, *in proportion to the census directed to be taken by the Constitution.*

## ANOTHER IMPORTANT OPINION.

In the notable case of Cohen *vs.* Virginia, 6th Wheaton, 264, February term, 1821, composed of the same bench which decided the case of Loughborough *vs.* Blake, the unanimous opinion of the court was delivered by Chief Justice Marshall, and in it several references are made bearing directly upon the authority of Congress to exercise exclusive legislation over the District of Columbia, forts, arsenals, dockyards, etc.

The following quotations are from this opinion of the court:

"In the enumeration of the powers of Congress which is made in the 8th section of the first article of the Constitution, we find that of exercising exclusive legislation over such District as shall become the seat of Government. *This power, like all others which are specified, is conferred on Congress as the legislature of the Union; for, strip them of that character, and they would not possess it. In no other character can it be exercised. In legislating for the District, they necessarily preserve the character of the legislature of the Union; for it is in that character alone that the Constitution confers on them this power of exclusive legislation.* This proposition need not be enforced."

"The 2nd clause of the sixth article declares that: 'This Constitution, and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land.'"

"The clause which gives exclusive jurisdiction is, unquestionably, a part of the Constitution, and, as such, binds all the United States."

"Those who contend that acts of Congress made in pursuance of this power do not, like acts made in pursuance of other powers, bind the nation, ought to show some safe and clear rule which shall support this construction, and prove that an act of Congress, clothed in all the forms which attend other legislative acts, and passed in virtue of a power conferred on, and exercised by Congress, as the legislature of the Union, is not a law of the United States, and does not bind them."

"*One of the gentlemen sought to illustrate his proposition that Congress, when legislating for the District, assumed a distinct character, and was reduced to a mere local legislature, whose laws could possess no obligation out of the ten miles square, by a reference to the complex character of this court.*"

* * * * * * *

"Since Congress legislates in the same forms and in the same character, in virtue of powers of equal obligation, conferred in the same instrument, when exercising its exclusive powers of legislation, as well as when exercising those which are limited, we must inquire whether there be anything in the nature of this exclusive legislation which necessarily confines the operation of the laws, made in virtue of this power, to the place with a view to which they are made."

* * * * * * *

"Connected with the power to legislate within this District is a similar power in forts, arsenals, dock-yards, etc."

* * * * * * *

"Let these actual provisions of the law, or any other provisions which can be made on the subject, be considered with a view to *the character in which the Congress acts when exercising the powers of exclusive legislation.*"

* * * * * * *

"The solution, and the only solution of the difficulty is, that the power vested in Congress, as the legislature of the United States, *to legislate exclusively within any place ceded by a State, carries with it, as an incident, the right to make that power effectual.*"

* * * * * * *

"But we know that the principle does not apply, and the reason is, *that Congress is not a local legislature, but exercises this particular power, like all its other powers, in its high character as the legislature of the Union.* The American people thought it a necessary power, and they conferred it for their own benefit. Being so conferred, it carries with it all those incidental powers which are necessary to its complete and effectual execution."

"Whether any particular law be designated to operate without the District or not, depends upon the words of that law. If it be designed so to operate, then the question whether the power so exercised be incidental to the power of exclusive legislation, and be warranted by the Constitution, requires a consideration of that instrument. In such cases, the Constitution and the law must be compared and construed. This is the exercise of jurisdiction. It is the only exercise of which is allowed in such a case."

## OTHER DECISIONS BY THE SUPREME COURT.

The only other decisions of the Supreme Court of the United States since the elaborate opinions rendered in the cases of Loughborough *v.* Blake, and Cohen *v.* Virginia, which indicate

the powers of the Constitution conferred on Congress to impose direct taxes on "the property and privileges of the District" for improving the national seat of the Government of the United States, are the cases of Mattingly *v.* District of Columbia (97 U. S. 687), Welsh *v.* Cook (97 U. S. 541), and Gibbons *v.* District of Columbia (116 U. S. 404). The gist of these opinions is as follows:

In the case of Mattingly *v.* District of Columbia, Justice Strong, in delivering the opinion, says:

"Under the Constitution Congress had power to exercise exclusive legislation in all cases whatsoever over the District, and that includes the power of taxation (Cohen *v.* Virginia, 6 Wheat. 264). Congress may legislate within the District respecting the people therein as may the legislature of any State over any of its subordinate municipalities."

In the case of Welsh *v.* Cook, Justice Hunt, in delivering the opinion, says:

"It is not open to reasonable doubt that Congress had the power to invest, and did invest, the District government with legislative authority."

In the case of Gibbons *v.* District of Columbia, Justice Gray, in delivering the opinion says:

"The objection taken in argument . . . is founded on a misunderstanding of the case of Loughborough *v.* Blake (5 Wheat. 317). The point there decided was, that an act of Congress laying a direct tax throughout the United States in proportion to the census to be taken by the United States, might comprehend the District of Columbia; and the power of Congress legislating as a local legislature for the District, to lay taxes for District purposes only, in like manner as the legislature of a State for State purposes, was expressly admitted and has never since been doubted (Loughborough *v.* Blake, 5 Wheat. 317; Welsh *v.* Cook, 97 U. S. 541; Mattingly *v.* District of Columbia, 97 U. S. 687).

"In the exercise of this power Congress, like any State legislature, unrestricted by any constitutional provisions, may, at its discretion, wholly exempt certain classes of property from taxation, or may tax them at a lower rate than any other property."

## OPINIONS OF COURT COMPARED.

In comparing the brief opinions in the cases decided by Justices Strong, Hunt, and Gray, with the elaborate and exhaustive interpretation of the powers and restrictions of the Constitution, as delivered by Chief Justice Marshall, such comparison is made in the spirit of the language suggested in the case of Cohen *v.* Virginia, wherein the Chief Justice says:

"The question whether the power so exercised be incidental to the power of exclusive legislation, and be warranted by the Constitution, requires the consideration of that instrument. In such cases the Constitution and the law must be compared and construed."

The question before the court in the case of Loughborough *v.* Blake is first stated as follows:

"This case presents to the consideration of the court a single question. It is this: Has Congress a right to impose a direct tax on the District of Columbia?"

Chief Justice Marshall then proceeds, in the next paragraph, to state the position of counsel who argued the negative, as follows:

"The counsel who maintains the negative has contended that Congress must be considered in two distinct characters. In one character as legislating for the States, in the other, as a local legislature for the District. In the latter character, it is admitted that the power of levying direct taxes may be exercised; but, it is contended, for District purposes only, in like manner as the legislature of a State may tax the people of a State for State purposes."

It is very important to bear in mind that the above paragraph states merely the admission of counsel, and is not the opinion of the court.

It was counsel who contended in argument "that Congress must be considered in two distinct characters; in one character as legislating for the States, in the other as a local legislature for the District."

It was counsel who asserted that "in the latter character it is admittted that the power of levying direct taxes may be exer-

cised; but, it is contended, for District purposes only, in like manner as the legislature of a State may tax the people of a State for State purposes."

Chief Justice Marshall, in the next paragraph, as will be seen by reference, disposes of the question raised by counsel, "who has contended that Congress must be considered in two distinct characters."

Having thus dismissed from further consideration the construction contended for by counsel for the negative, Chief Justice Marshall proceeds to express the unanimous opinion of the court, based on its own construction of the powers and restrictions of the Constitution in the exercise by Congress of authority to levy direct taxes on the District of Columbia.

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The importance of the foregoing will be apparent in considering the brief opinions of the Supreme Court in the cases of Mattingly *v.* District of Columbia, delivered by Justice Strong, Gibbons *v.* District of Columbia, delivered by Justice Gray, and Welsh *v.* Cook, delivered by Justice Hunt.

In the case of Mattingly *v.* District of Columbia, the only constitutional reference made by Justice Strong is as follows:

"Under the Constitution Congress has power to exercise exclusive legislation in all cases whatsoever over the District, and that includes the power of taxation (Cohens *v.* Virginia, 6 Wheat. 264). Congress may legislate within the District respecting the people and property therein, as may the legislature of any State overy any of its subordinate municipalities."

In the case of Welsh *v.* Cook (cited by Justice Gray in Gibbon *v.* District of Columbia), the only constitutional reference indicated therein by Justice Hunt, who delivered the opinion, is as follows:

"It is not open to reasonable doubt that Congress had the power to invest, and did invest, the District government with legislative authority."

In the case of Gibbons *v.* District of Columbia, Justice Gray, delivering the opinion of the court, says:

"The objection taken in argument * * * is founded on a misunderstanding of the case of Loughborough *v.* Blake (5 Wheat. 317).

"The point there decided was that an act of Congress laying a direct tax throughout the United States in proportion to the census to be taken by the United States might comprehend the District of Columbia; and the power of Congress, legislating as a local legislature for the District, to lay taxes for District purposes only, in like manner as the legislature of a State for State purposes, was expressly admitted and has never since been doubted (Loughborough *v.* Blake, 5 Wheat. 317; Welsh *v.* Cook, 97 U. S. 541; Mattingly *v.* District of Columbia, 97 U. S. 687)."

In his opinion, Justice Gray quotes Chief Justice Marshall's language in the case of Loughborough *v.* Blake, to the following extent:

"That an act of Congress *laying a direct tax throughout the United States in proportion to the census to be taken by the United States*, might comprehend the District of Columbia."

But when Justice Gray continues and says, "and the power of Congress, legislating as a local legislature for the District, to lay taxes for District purposes only, in like manner as the legislature of a State for State purposes, was expressly admitted, and has never since been doubted (Loughborough *v.* Blake, 5 Wheat. 317)," he does not quote from the decision of the court in the case of Loughborough *v.* Blake, but from the admission of counsel for the negative, which Chief Justice Marshall recites merely to give the position taken by counsel preliminary to formulating the opinion of the court.

Justice Gray further says: "In the exercise of this power Congress, like any State legislature, *unrestricted by any constitutional provisions*, may, at its discretion, wholly exempt certain classes of property from taxation, or may tax them at a lower rate than any other property."

It is a very remarkable statement, as made by Mr. Justice Gray, when he says that in the case of Loughborough *v.* Blake "it was expressly admitted, and has never since been doubted," that Congress had the power "to lay taxes for District purposes only, in like manner as the legislature of a State for State purposes."

Nowhere in the case cited can any such admission be found.

A fair consideration of the exhaustive opinion of Chief Justice Marshall will serve to confirm the expression of Mr. Justice Gray, to the effect that some one's opinion "is founded on a misunderstanding of the case of Loughborough *v.* Blake."

The entire opinion of Chief Justice Marshall in the case of Loughborough *v.* Blake is printed herewith, and all jurists, lawyers, and laymen are challenged to find any language therein which indicates the opinions of Justices Strong, Hunt, and Gray, other than in the words used in the admission of counsel preceding the opinion of the court. And the same challenge is extended to the case of Cohen *v.* Virginia.

In the case of Cohen *v.* Virginia (the only case cited by Justice Strong in Mattingly *v.* District of Columbia), Chief Justice Marshall says:

"In the enumeration of the powers of Congress, which is made in the eighth section of the first article of the Constitution, we find that of exercising exclusive legislation over such District as shall become the seat of government.

"*This power, like all others which are specific, is conferred on Congress as the legislature of the Union; for strip them of that character and they will not possess it. In no other character can it be exercised.*

"*In legislating for the District they necessarily preserve the character of the legislature of the Union, for it is in that character alone that the Constitution confers on them this power of exclusive legislation.*"

Chief Justice Marshall further states:

"One of the gentlemen sought to illustrate his proposition that Congress, when legislating for the District, assumed a distinct character, and was reduced to a mere local legislature whose laws could possess no obligation out of the ten miles square, by reference to the complex character of this court."

The Chief Justice then states the opinion of the court on that point as follows:

"*But we know that the principle does not apply, and the reason is that Congress is not a local legislature, but exercises this particular power, like all its other powers, in its high character as the legislature of the Union.*"

Do the brief announcements of the U. S. Supreme Court in the cases cited, as opinionated by Justices Strong, Gray, and Hunt,

make void the law as stated in the elaborate and exhaustive opinions of the court, as delivered by Chief Justice Marshall?

These justices seem to have accepted the theory that Congress, as a legislative body, could transfer to others its exclusive authority to legislate.

*Per contra*, it is contended by many able jurists, who seem to take the common-sense view of the proposition, that when a constitution confers on a body politic "the power to exercise exclusive legislation in all cases whatsoever," such body cannot delegate its powers to any other legislative authority.

In 1820, when the case of Loughborough *v.* Blake was thoroughly considered and decided, the interpretations and conclusions as to the powers and restrictions of the Constitution conferred on Congress were fresh and familiar to the Supreme Court of the United States at that period by reason of its frequent consideration in construing that instrument in its application to the general welfare and destiny of the then young republic of States, and in guiding its course onward to its present and future greatness by constitutional flash-lights and well-defined landmarks. There was no somnolence on the bench in those days.

The following extract from Mr. Justice Story's dedication of his "Commentaries on the Constitution of the United States" is hereto appended in order that the people of the District, including lawyers, laymen, jurists, and the national legislators, may have a clear and appreciable conception of the supreme judicial character of Chief Justice Marshall, who has so clearly and exhaustively defined the powers and restrictions of the Constitution conferred on Congress in the exercise of exclusive legislation over the District of Columbia, the seat of government of the great Republic of America:

"CAMBRIDGE, MASS., 1832.

"To the Honorable JOHN MARSHALL, LL. D.,

"*Chief Justice of the United States of America.*

"SIR: I ask the favor of dedicating this work to you. I know not to whom it could with so much propriety be dedicated as to one whose youth was engaged in the arduous enterprises of the Revolution, whose manhood assisted in framing and supporting the National Constitution, and whose maturer years have been devoted to the task of unfolding its powers and illustrating its principles.

"When, indeed, I look back upon your judicial labors during a period of thirty-two years, it is difficult to suppress astonishment at their extent and variety, and at the exact learning, the profound reasoning, and the solid principles which they everywhere display.

"Other judges have attained an elevated reputation by similar labors in a single department of jurisprudence. But in one department (it need scarcely be said that I allude to that of constitutional law) the common consent of your countrymen has admitted you to stand without a rival. Posterity will assuredly confirm, by its deliberate award, what the present age has approved as an act of undisputed justice.

"Your expositions of constitutional law enjoy a rare and extraordinary authority. They constitute a monument of fame far beyond the ordinary memorials of political and military glory. They are destined to enlighten, instruct, and convince future generations, and can scarcely perish but with the memory of the Constitution itself. They are the victories of a mind accustomed to grapple with difficulties, capable of unfolding the most comprehensive truths with masculine simplicity and severe logic, and prompt to dissipate the illusions of ingenious doubt and subtle argument and impassioned eloquence. They remind us of some mighty river of our own country which, gathering in its course the contributions of many tributary streams, pours at last its own current into the ocean—deep, clear, and irresistible."

Justice Story was associated with Chief Justice Marshall on the bench for many years.

## THE LAW AT PRESENT ENFORCED BY CONGRESS.

In the act of June 11, 1878, giving a permanent form of government to the District of Columbia, it is provided that the District Commissioners shall annually submit, the Secretary of the Treasury revise, and the Commissioners transmit to Congress estimates of the amounts necessary to defray the expenses of the District of Columbia for the next fiscal year, and—

"To the extent to which Congress shall approve of said estimates Congress shall appropriate the amount of 50 per cent. thereof; and the remaining 50 per cent. of such approved estimates shall be levied and assessed upon the taxable property and privileges in said District, other than the property of the United States and of the District of Columbia."

Included among other recent improvements of "the seat of the Government of the United States," in which Congress imposes a tax on the District for one-half the expense, is the construction of a system of sewers; the pavement of streets; enlarging receiving reservoirs; establishing a permanent system of highways; extension of streets; improving public alleys; establishing the National Zoological Park and the National Rock Creek Park; and the attempted construction of a national water-supply tunnel.

The expenditures for the National Zoological Park were $443,500—one-half, $221,750, taxed on the District; the National Rock Creek Park cost $1,200,000—one half of which, $600,000, is taxed on the District; improving the receiving reservoir, $60,000—one-half, $30,000, taxed on the District; and for other similar expenditures of the District government for the national improvement of the seat of Federal authority, the same proportion, one-half, "shall be levied and assessed upon the taxable property and privileges in said District, other than the property of the United States and of the District of Columbia."

A few instances of the arbitrary authority of the taxing power enacted by Congress in exercising exclusive legislation over the District will illustrate the danger ahead to property-owners, unless the decisions of the Supreme Court, delivered by Chief Justice Marshall, are enforced as the supreme law of the land governing both Congress and the District.

In the attempted construction of the National Water Supply Tunnel, Congress appropriated $2,570,279.30, which was expended by the Engineer Department of the Government in its plan to increase the water supply for the seat of the Government of the United States.

One-half of the amount sunk in the tunnel—$1,285,139.65—is imposed as a direct tax on the property of the people located within the District, "other than the property of the United States and of the District of Columbia."

The judgment of the Supreme Court of the United States, in the case of Loughborough *v.* Blake, is, that the power of Congress to levy a direct tax on the District of Columbia is conditioned by the express declaration that its "power to lay and collect direct taxes within the District of Columbia is in proportion to the census directed to be taken by the Constitution."

Applying the rule of that decision to the National Water Supply Tunnel tax, and it will be found that $9,450—instead of $1,285,139.65—is the constitutional proportion of the tax which the District of Columbia is liable for.

## DIRECT TAX AND POPULATION.

The population of the District of Columbia in 1890, according "to the census directed to be taken by the Constitution," was 230,393. The population of the United States taken by the same census was 62,622,250. The population of the District of Columbia is, in round numbers, 1-272 of the population of the United States; and in that proportion of the $2,570,279.30 water supply tunnel tax, expended and wasted by the general Government, the only amount that can be levied on the District is simply its proportion, to wit, the sum of $9,450, which is at the rate provided for in the Constitution of the United States, as expounded by Chief Justice Marshall in the case of Loughborough *v.* Blake.

On the same basis of proportion the amount of direct tax to be imposed on the District for the Zoological National Park is but $1,630, instead of $221,750. By the same proportion the amount the District can constitutionally be taxed for in payment of the National Rock Creek Park is $4,410, instead of $600,000.

The supreme law of the land, in full force and effect by the decision of the Supreme Court, declares that "the principle of apportionment, also established in the Constitution, *secures the District from any oppressive exercise of the power to lay and collect direct taxes*" (Loughborough *v.* Blake).

It is a simple matter of computation to apply the rule to all the unconstitutional and oppressive taxes imposed on the District of Columbia, including its bonded indebtedness of some $18,000,000, the proceeds of which were expended by officers of the United States Government, authorized by Congress, in improving the national seat of the Government of the United States; the proportion of which the District is liable for is easily calculated.

It might be asked how "laying taxes for District purposes only" can be segregated so as to distinguish what, if any, is local from what is national?

All improvements made by the imposition of direct taxes on the District of Columbia are for the development and benefit of "the seat of the Government of the United States," held in trust by Congress, under its exclusive power of legislation, for the interest and general welfare of all the States and people of the Republic.

The complete answer is furnished by Chief Justice Marshall in the case of Loughborough *v.* Blake, in which he says: "The standard, then, by which direct taxes *must* be laid, is applicable to this District, and will enable Congress to apportion on it its just and equal share of the burden, with the same accuracy as on the respective States. If the tax is laid on in this proportion it is within the very words of the restriction. It is a tax in proportion to the census or enumeration referred to."

Justice Story, in his work on the Constitution (section 998), says:

"When a direct tax is to be laid on the District or the Territories it can be laid *only* by the rule of apportionment."

Just as well might it be contended that Congress has the power, under the exercise of its exclusive legislation, to impose a heavier duty upon foreign goods imported into the District than is imposed upon the people of the States as to contend that it has the power to lay a direct tax upon the people of the District for improving the nation's capital without at the same time imposing a similar tax upon all the States and Territories of the Union.

As an evidence that Congress does not always conform to the act of June 11, 1878, which provides that the United States shall appropriate for one-half of the expenses of governing the District, the following recent items, furnished from the books of the national treasury, aptly illustrate:

The appropriation by Congress of $90,000 for defraying the expenses of the national encampment of the Grand Army of the Republic—veterans who had breasted the waves of battle in deadly conflict, in which the destiny of the national seat of government was imperilled—was wholly taxed "on the property and privileges in the District, other than the property of the United States and of the District of Columbia."

The appropriation by Congress of $40,000 in 1892 for im-

proving public alleys at the national seat of Government was wholly taxed on the District.

The appropriation of $3,000 for a national public bathing beach was wholly taxed on the District.

The appropriation of $5,000 on account of a permanent system of highways in the federal capital of the nation was wholly taxed on the District; as was also the appropriation of $5,000 for the extension of North Capitol street.

And yet the supreme law of the land, as expounded by the Supreme Court of the United States, says that "the power to lay and collect direct taxes within the District of Columbia is in proportion to the census directed to be taken by the Constitution."

## DIRECT TAXATION.

What constitutes a "*direct* tax"?

Imposing taxes on the real estate and appurtenances of the people of the District for the government of the District of Columbia is a direct tax.

The Constitution of the United States provides that "representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers."

"No capitation, or other direct tax, shall be laid unless in proportion to the census hereinbefore directed to be taken."

In the case of Loughborough *v.* Blake the Supreme Court decides that a direct tax imposed throughout the Union includes the District of Columbia.

In the case of Springer *v.* United States (102 U. S. 586), the constitutional interpretation of what is a direct tax is elaborately set forth.

Justice Swayne, in delivering the opinion of the court, includes a record of laws enacted and decisions of the Supreme Court on the subject of direct taxation. Some of the cases cited are appended. The court said:

"Our conclusions are that direct taxes, within the meaning of the Constitution, are only capitation taxes, as expresssed in that instrument, and *taxes on land.*"

The opinion cites as follows:

*Veazie Bank* v. *Fenno* (8 Wall. 533), wherein Chief Justice Chase, in his elaborate examination of the subject, says:

"It may be rightfully affirmed that in the practical construction of the Constitution by Congress direct taxes have been limited to taxes on land and appurtenances, and taxes on polls, or capitation taxes."

*Scholey* v. *Rew* (23 Wall. 331), wherein Justice Clifford, for the court, says:

"Taxes on houses, lands, and other permanent real estate have always been deemed to be direct taxes, and capitation taxes, by the express words of the Constitution, are in the same category."

Justice Swayne cites Chancellor Kent, Justice Story, and other commentators on the Constitution, in affirmation of what is a direct tax as decided by the court.

In the opinion of the court deciding that the income tax was not a direct tax, Justice Swayne says:

"The clause of the Constitution bearing on this subject is as follows: 'No capitation, or other direct tax, shall be laid, unless in proportion to the census hereinbefore directed to be taken.'

"Was the tax here in question a direct tax? If it was, not having been laid according to the requirements of the Constitution, it must be admitted that the laws imposing it, and the proceedings taken under them by the assessor and collector for its imposition and collection, were all void."

The tax laid on the District for one-half the expenses for the government of the District of Columbia, the nation's capital, is a direct tax on "the property and privileges," on the real estate and appurtenances, in the District, "other than that of the United States and of the District of Columbia."

According to the opinion of the Supreme Court of the United States above quoted, the laws imposing a direct tax on the District, "not having been laid according to the requirements of the Constitution, the proceedings taken under them by the assessor and collector" of the District of Columbia "for its imposition and collection" are "all void."

A statement from the assessor of the District shows that the number of taxable real-estate owners listed in the District of Columbia is 26,869, and that the listed taxable personal-property owners is 2,044, making the total number of tax-payers in the Dis-

trict, upon whose "property and privileges" a direct tax is laid for one-half the expenses of governing the district selected as the capital of the United States, is but 28,913 of the 62,622,250 population of the whole country by the census of 1890.

And Congress, as the national trustee, exercising exclusive legislation over the seat of government of the United States, in trust for the use and benefit of all the States and people of the Union, lays a direct tax on "the property and privileges" of less than 30,000 people, to pay one-half the expenses of governing the federal capital of a nation of 70,000,000 people.

The 230,379 population of the District of Columbia per census of 1890 is comprised of 154,682 white, and 75,697 colored people.

## TAXES COLLECTED.

The Government of the United States has collected $37,112,-823.10 from the "property and privileges" of the people located within the limits of the federal seat of Government since the law of June, 1878, was enacted, which provides that the "property and privileges" of the District shall be taxed for one-half the expenses of the government of the District of Columbia. All of this sum was collected by the United States officers and paid into the Treasury of the United States. The amounts collected per annum are as follows:

| | | |
|---|---|---|
| The year ending June 30, | 1880 | $2,096,661 93 |
| | 1881 | 2,056,523 50 |
| | 1882 | 1,765,099 70 |
| | 1883 | 2,007,001 06 |
| | 1884 | 1,978,068 47 |
| | 1885 | 2,025,800 19 |
| | 1886 | 2,122,392 64 |
| | 1887 | 2,323,262 26 |
| | 1888 | 2,647,410 09 |
| | 1889 | 2,544,192 68 |
| | | $21,566,422 52 |
| | 1890 | 2,907,314 96 |
| | 1891 | 2,874,234 71 |
| | 1892 | 3,025,079 76 |
| | 1893 | 3,139,771 15 |
| (Conservative estimate), | 1894 | 3,600,000 00 |
| | | $15,546,400 58 |

The rule of apportionment for laying direct taxes is stated in the Constitution as follows:

"Direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers.

"No capitation, or other direct tax, shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken."

The Supreme Court has decided that the District of Columbia is included with the States in the enforcement of this constitutional provision. The act of Congress of June, 1878, provides that Congress shall appropriate for one-half of the expenses of the government of the District of Columbia, "and that the remaining half shall be levied and assessed upon the taxable property and privileges of the District, other than the property of the United States, and of the District of Columbia."

During the ten years from 1880 to 1890, the census of 1880 was the rule for apportionment of direct taxes as provided for in the Constitution. During that period the "property and privileges" of the District paid into the United States Treasury the sum of $21,566,422.52. Assuming that Congress appropriated a similar amount for its half, the total would be $43,132,845.04 expended by the United States for the government of the District of Columbia during that period.

The population of the United States by the census of 1880 was 50,155,783. By the same census the population of the District of Columbia was 177,624, which was 1-282 of the population of the Union.

On the basis of apportionment as provided in the Constitution of the United States, the persons, property, and privileges of the District of Columbia would be liable for only 1-282 part of the $43,132,845.04 expended by the United States in the government of its national capital during the period stated. That proportion is $152,953.00, required by the rule of the Constitution, the supreme law of the land, instead of $21,566,422.52, as demanded by Congress and as collected and paid into the Treasury of the United States.

The population of the United States by the census of 1890 was 62,622,250, and of the District of Columbia 230,393, which is

1-272 of the population of the Union. The amount levied and collected from the persons, property, and privileges of the District for the five years under the census of 1890 is $15,546,400.58. Congress appropriating a like sum, makes the total $31,092,801.16 expended by the United States during that period for the government of the capital of the nation.

The constitutional proportion of that sum for which the District of Columbia is liable is 1-272, which is $114,311.00, instead of $15,546,400.58 collected from the District and paid into the Treasury of the United States.

## DISTRICT OF COLUMBIA DEDICATED TO NATIONAL PURPOSES.

The Supreme Court of the United States, in the case of Crandall *v.* Nevada (6 Wall. 43), Justice Miller delivering the opinion, has this to say about the important and exclusive national purposes for which the District of Columbia was selected as the seat of the Government of the Union:

"The people of the United States constitute one nation. They have a Government in which all of them are deeply interested. This Government has necessarily a capital established by law where its principal operations are conducted. Here sits its legislature, composed of senators and representatives from the States and from the people of the States. Here resides the President, directing, through thousands of agents, the execution of the laws over all this vast country. Here is the seat of the supreme judicial power of the nation, to which all its citizens have a right to resort to claim justice at its hands. Here are the great executive departments, administering the offices of the mails, of the public lands, of the collection and distribution of the public revenues, and of our foreign relations. These are all established and conducted under the admitted powers of the Federal Government. That Government has a right to call to this point (its capital) any or all of its citizens to aid in its service as members of Congress, of the courts, of the executive departments, and to fill all its other offices. . . . In all these it demands the service of its citizens, and is entitled to bring them from all quarters of the nation.

"But, if the Government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of Government to assert any claim he may have upon

the Government, or to transact any business he may have with it; to seek its protection, to share its offices, to engage in administering its functions."

In the same opinion Justice Miller quotes the views of Chief Justice Taney in the Passenger cases (7 How. 283), as follows:

"Living as we do under a common government, charged with the great concerns of the whole nation, every citizen of the United States, from the most remote States or Territories, is entitled to free access to the principal departments established at Washington. For all the great purposes for which the Federal Government was formed we are one people, with one common country."

In the case of Scott *v.* Sanford (19 How. 393, 448), in discussing the powers of the General Government to obtain and hold colonies or dependent Territories over which Congress might claim the right to legislate without restriction, Chief Justice Taney says:

"Whatever the Government acquires it acquires for the benefit of the people of the several States who created it. It is their trustee, acting for them and charged with the duty of promoting the interests of the whole people of the Union in the exercise of the powers specifically granted."

The Government "acquired" exclusive legislative authority over the District of Columbia for the seat of Government of the United States, and Congress "is the trustee . . . charged with the duty of promoting the interests of the whole people of the Union in the exercise of the power specifically granted."

Among the "powers specifically granted" which Congress is "charged with" in "the duty of promoting the interests of the whole people of the Union" is the construction of a comprehensive national system of permanent public improvements at the seat of Government of the United States, commensurate with the magnitude of the important Government interests there and speedily augmenting, and the rapidly increasing force of employees and their families called there from all sections of the country to conduct the affairs of the General Government; and also for the use, benefit, and comfort of the countless thousands of national tax-paying citizens of the Republic who are continuously visiting the federal capital on business connected with the government of the nation.

These emphatic opinions of the United States Supreme Court, in its interpretation of the Constitution, clearly defined for what great and exclusive national purposes the District of Columbia was dedicated as the seat of the Government of the United States.

Therefore, to keep pace with the progress of the country, and consequently rapid increase of public business to be transacted at the federal capital, the comprehensive system of national improvements already initiated therein should be extended on a scale commensurate with the continuous increase at the seat of Government of the public affairs of the nation, resulting from the rapid progress in population and development of the boundless resources of the sturdy young Republic.

These improvements are required as necessary for the use, health, comfort, and convenience of the Government officials who, in the discharge of their national duties, are domiciled within the District, accompanied by their families and attendants; for the thousands of Government officers throughout the nation whose official duties require their presence from time to time at the seat of Government; for a haven of rest for the grand corps of retired army and navy officers and veterans and their families, whose valor on land and water in defence of the nation illuminates the pages of history; and also for the official residence of the representatives of all the foreign Governments, their families and retinue.

In view of these national purposes for which the District of Columbia was dedicated, the Supreme Court of the United States has decided that a direct tax for the improvement of the national seat of the Government can be imposed only in proportion to the census directed to be taken by the Constitution (Loughborough *v.* Blake, 5 Wheat. 317).

The entire nation of 70,000,000 population is interested in and benefited by the improvement, progress, and development of the seat of the Government of the United States, as well as the 300,000 people of the nation who are domiciled within its limits.

The capital of the nation is the common heritage of all the people of the Republic.

And yet Congress, acting as the trustee of the whole nation, continues to impose a direct tax for one-half the expenses of the Government of the District of Columbia "upon the property and

privileges in said District other than the property of the United States and of the District of Columbia."

The constitutional powers of Congress extend over the entire area of the District of Columbia in the same manner as over the Capitol and other public buildings and grounds. It can take possession of every foot of land owned by citizens in the District, by paying just compensation therefor, and convert it into public uses if necessary. It can occupy every acre of the District for public buildings and grounds exclusively for the use of the Government of the United States, and can prohibit all commercial business or private residence therein except so far as such business or residence is exclusively for the purposes of the Government of the Union.

It is no sufficient answer to the plan of extending public improvements throughout the District to say that the Government does not require all the area of the District for public purposes. It may require it all in time, for the future greatness of the Republic seems unlimited.

The only limit on the territorial area of the seat of the Government of the United States is defined in the Constitution, where it says:

"Such district, not exceeding ten miles square."

The district selected did comprise ten miles square, but the portion south of the Potomac was subsequently receded to Virginia, thus reducing the original district about one-third of its area.

The section of the Constitution which confers on Congress the power to exercise exclusive legislation over the seat of Government includes the following:

"And to exercise like authority over all places . . . for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

In illustration of the similar application of this exercise by Congress of exclusive legislative authority, take the Fortress Monroe reservation at Old Point Comfort, Virginia, as an example. The lawful regulations prescribed for governing the Fortress Monroe reservation are executed by military officers of the United

States. The regulations enacted for the government of the District of Columbia are executed by three District Commissioners, two civil and one military, officers of the United States.

The authority exercised in both cases is conferred by the Constitution, in the same section and language thereof.

The people of the District of Columbia, not connected with the Government of the United States, are permitted to reside therein by the sufferance of the General Government, as like privileges are extended to the residents on the Fortress Monroe reservation, with this difference:

The land-owners of the District of Columbia hold title to their realty until the same is needed for Government purposes, and then they must surrender it, receiving just compensation therefor. The Fortress Monroe reservation is owned entirely by the United States, the residents thereon have no title to the realty, and, like the people of the District, they carry on business merely by the sufferance of the Government. Property-holders in the District of Columbia and the people located on the Fortress Monroe reservation must vacate their premises whenever the United States needs for public purposes the property they occupy.

## GOVERNMENT OFFICIALS IN THE DISTRICT.

There are now over 20,000 persons, officials of the United States Government, employed and domiciled within the territory of the District, and the number is continuously augmenting by reason of the increase of population and development of the resources of the nation.

It is the usual rule to compute a family of five persons to each household, and, based on that ratio, there are over 100,000 people in the District associated in the administration of the affairs of the General Government.

Besides that number whose residence at the seat of Government is required to transact the public business, there is also required from time to time the presence of other officials of the United States from all sections of the country. A vast number of national tax-paying citizens of the Republic have business interests with the General Government which require their presence at the

federal capital, besides the endless trains of American yeomanry who annually visit the capital of their country.

A comprehensive system of public improvements is required and is necessary at the capital of the nation for the use, health, and comfort of this vast aggregation of citizens of the United States in the public service of the Government and of all persons having business relations with the Government to be transacted at its federal capital.

Where, then, can the dividing line be drawn between a national system of public improvements at the seat of the Government of the United States for the general welfare of the entire nation, and the necessary improvements for the use and comfort of the comparatively small unofficial population who, by the sufferance of the General Government, are permitted to reside within the District?

These comprehensive improvements are required to be conducted on a scale commensurate with the magnitude of the public business of the whole country carried on at its seat of Government, and would be so constructed even if there were no private ownership of real estate to tax within its boundary. And yet, under existing laws, Congress imposes a direct tax for one-half the expenses for improving and governing the seat of the Government of the United States "upon the property and privileges of the District other than the property of the United States and of the District of Columbia."

Every official connected with the improvement and government of the District of Columbia is an officer of the United States Government, and draws his salary for services from the Treasury of the United States.

It would seem to be as constitutional and just to impose a direct tax on "the property and privileges" of the cities of St. Louis, Memphis, and New Orleans to pay one-half of the expenditures of the General Government for improving the Mississippi River for public uses as to levy a direct tax on the District for one half the expenses of the improvement and government of the capital of the United States. And this illustration will apply to all Government disbursements for public improvements throughout the country.

## CONCLUSIONS.

After a full consideration of the construction of the Constitution, and its application to the government of the District of Columbia, in the decisions rendered in the exhaustive and unanimous opinions of the United States Supreme Court, delivered by Chief Justice Marshall, and which opinions have never been overruled, the conclusion seems clear—

That Congress can *only* legally enact, and the courts maintain, a law for laying a direct tax "upon the property and privileges" of the people of the District of Columbia when such tax is laid in proportion to the census of population as directed to be taken by the Constitution.

That the only rate at which "property and privileges" in the District of Columbia can have a direct tax during the legal operative force of the U. S. census of 1890, is in proportion of 230,393, the population of the District, to the 62,622,250, population of the United States, the ratio of proportion being 1 to 282.

That the Constitution confers on Congress power "to exercise exclusive legislation in all cases whatsoever" over the nation's seat of government, but it limits the power of Congress in laying a direct tax on the property of the District unless laid in proportion to the census of the United States.

That a direct tax levied in the District of Columbia has no constitutional status, unless at the same time it is in force throughout the country in proportion to the census of the United States, nor would indirect taxes imposed in the District be within the laws of the Constitution unless the same taxes were uniform throughout the United States.

That a direct tax laid in any other manner is unconstitutional and void.

In the verification of this statement, Mr. Justice Swayne, in the opinion of the Supreme Court in the Springer case, says: "Where a direct tax has been laid not *according to the requirements of the Constitution*, it must be admitted the laws imposing it, and the proceedings taken under them by the assessor and collector for its imposition and collection, *were all void.*"

The legality of a direct tax in the District of Columbia is defined in the words of the Constitution, to wit: "*No direct tax shall be laid unless in proportion to the census*" *of the United States.*

That Congress is not a local legislature for the District in the sense applied by the state legislatures for the government of "their several subordinate municipalities." Congress legislates exclusively over the seat of Government of the United States in its character as the legislature of the Union.

That powers and restrictions of the Constitution expressly conferred and laid on Congress to "exercise exclusive legislation in all cases whatsoever" over the federal capital of the nation prohibit Congress from delegating such powers to any local body to legislate for municipal or any other purposes over the seat of the Government of the United States.

That it was explicitly denied by Chief Justice Marshall that Congress can legislate "as a local legislature, to lay taxes for District purposes only, in like manner as the legislature of a State for State purposes." In Cohen *v.* Virginia, he says:

"Congress is not a local legislature, but exercises . . . all its powers in its high character as the legislature of the Union."

That all acts of Congress for the government of the District dedicated to the federal capital are executed by officers of the United States. Such laws are for the development and improvement of the seat of Government for public purposes.

That all private and personal improvements and business industries in the District permitted by the sufferance of the Government must conform to and comply with the regulations enforced by the officers of the United States Government under laws enacted by Congress legislating in its high character as the legislature of the whole Union, and the acts of Congress relating thereto can be constitutionally construed and applied in no other manner.

That it is the laws of the nation which govern the people and affairs of the District of Columbia, not the ordinances of a local body legislating for municipal purposes.

The constitutional laws of Congress enacted for the government of the federal capital are comprehensive in their applica-

tion for all the uses, benefits, purposes, and comforts of the people of the United States and the general welfare of the nation. It is a national government of the people, by the people, and for the people of the great American republic, within which the citizens of the District of Columbia are included.

All of which is herewith respectfully submitted for the consideration, absorption, digestion, and evolution of the constitutional statesmen of Congress, the tax-payers of the District of Columbia, and the body politic in general.

HALLET KILBOURN.

WASHINGTON, D. C., *May* 8, 1894.

Since the foregoing was compiled the United States Supreme Court, in its recent opinion in the income-tax case, says: "The requirement of the Constitution is that *no direct tax shall be laid* otherwise than by apportionment." "That Congress *must* impose *direct taxes* by the rule of apportionment, and indirect taxes by the rule of uniformity."

# A FEW BRIEF PEN SKETCHES

## Illustrating Some of the Attractions of the Nation's Seat of Government.

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The District of Columbia and Washington City have become the pride of the nation.

Washington is the most cosmopolitan city in the country.

It has 300,000 population, and is rapidly moving onward.

It has the best paved broad avenues and streets of any city in the land.

It has more magnificent natural suburban scenery and surroundings than any other capital city on the globe.

It contains the largest and finest public buildings in the world.

It is the most attractive city for residents, sojourners, and visitors on the continent.

The majority of its population are of the most intelligent people of the Union.

It is rapidly becoming the national centre of education, science, art, and literature, as it is already the political and social centre of the United States.

It is also rapidly becoming the residence of people of wealth, refinement, and culture from all parts of our country.

Its universities, colleges, academies, public schools, seminaries, and other institutions of education and useful instruction are among the foremost in the land.

It is one of the healthiest localities in the country, and with the completion of the Potomac river front improvements, will be the model sanitary city of the land.

Washington has broader avenues, larger public grounds and reservations, and more parks, circles, triangles, open spaces, and miles of thrifty shade trees in proportion to its area than any other city in the world.

It presents the best inducements for investments in property, as its prosperity, growth, and grandeur are assured by the entire nation.

The continued development of the vast resources throughout the Republic increases the business of the General Government to be transacted at the National Capital; the progress of the country at large thus insures the continued prosperity of its national seat of Government.

No other city in the land has so substantial a guarantee for its future; and while the national Government exists, Washington and the District will advance with the growth and development of the Republic.

Its climate in the fall, winter, and spring is unexceptionable; in the summer it is very enjoyable with its superabundance of shade trees; its lawns, circles, triangles, squares, and parks all blooming with foliage.

Every new quarter-section of land settled upon—

Every new mine discovered and operated—

Every new manufactory established—

Every emigrant who lands on our shores—

Every ship that enters our ports—

Every new business enterprise started—

Every extension of railroad traffic—

Every increase of population—

Every invention and development of new resources and industries—

In short, everything that pertains to the greatness and advancement of the nation increases the Government's business at Washington; and while other cities throughout the country have important special avenues of trade, commerce, and general business, the whole country pays tribute to the progress and prosperity of its National Capital.

The government of Washington and the District of Columbia is entirely national in its character, being under the exclusive control of the Congress of the United States as trustee for the people of the entire nation.

The District of Columbia is the only neutral District in the Union; its government is alike to the people of the whole country, regardless of sections, creeds, politics, religion, and the peculiari-

ties and isms which to a more or less extent sometimes shape the sentiment of other localities.

Citizens from all sections of the country can assemble here without exciting local jealousies, as the government of the District is the common heritage of the 70,000,000 people of the United States.

The resident population of the District comprises citizens from all sections of the country.

It is rapidly becoming the favorite place for holding conventions, anniversaries, and public gatherings of the various societies and organizations throughout the land.

The Departments, Institutions, Asylums, Courts, Bureaus, Museums, Commissions, Offices, and Boards of the General Government established here are being constantly increased in consequence of the rapid growth of national business resulting from the wonderful progress and development of the vast resources of the Republic.

It is the official residence of the diplomatic representatives and their attachés of foreign governments.

As the capital of a great nation, cosmopolitan life exists here as in the capitals of the Old World.

It is the headquarters of the Army and Navy, and the domicile of a great many of the officers and their families.

In the winter season it is the great society centre of the country.

It broad smooth thoroughfares present the most attractive line of march for military and civic processions, and it is the paradise for bicycles.

It contains nearly 100,000 shade trees, making Washington, in the summer, resemble a grand national park, interspersed with magnificent public buildings, handsome residences, church steeples, monuments, and statuary.

With the completion of Potomac Park, over 700 acres of land will be added to the Mall, now extending from the Capitol to the Washington Monument, making over 1,000 acres of magnificent park land and all its adornments located, comparatively, in the heart of the city.

The romantic Rock Creek Park of 2,000 acres and the adjoining Zoological Park of 160 acres are within the suburbs of the city.

The nation's monument to George Washington, which marks the centre of the original District dedicated for the seat of the Government of the United States, is the loftiest structure ever erected in the world to commemorate a citizen.

The attractive beauty of the elevated suburbs surrounding Washington is unequalled. The grand panorama of natural scenery, with its bold and varied outlines bordered by the broad silvery Potomac, presents a magnificent landscape view from all points of observation.

Washington is the bower of paradise for the enjoyment of bridal couples. The coming race may be impressed with the greatness of the Republic which is so well exemplified in the grandeur of its National Capital.

Washington has the fattest terrapin, the finest flavored ducks, the choicest savory crabs, the most succulent oysters, and the greatest variety of fish and game which Chesapeake Bay and its tributaries can furnish to gratify the appetite of man, woman, and child.

# THE PROPHECY FULFILLED.

**The Agitation Procured a Change of Government, and the Comprehensive Plan of Improvements Inaugurated by the Genius of Gov. Shepherd Secured the Grand Results.**

The *Evening Star*, in October, 1883, republished Mr. Kilbourn's letter, written in 1868, with comments, as follows:

"In looking at the marvellous changes and improvements wrought in Washington and the District of Columbia, as a direct result of the change of their form of government, the following letter, written by Mr. Hallet Kilbourn and published in the *Washington Chronicle* in 1868, will be read with interest.

"As is well known by those familiar with the subject, Mr. Kilbourn was one of the first, probably the very first, to agitate the subject of a change, and an untiring worker in its behalf.

"His photograph of the condition of things then existing is wonderfully accurate, while the manner in which his predictions as to the growth and improvements of the city have been so thoroughly verified by actual results as to make them seem almost like a prophecy."

The continued progress and improvements in Washington and the suburbs of the District still more largely emphasize the prophecy.

STATING THE CASE.

*To the Editor of the Chronicle:*

The question of the government of the District of Columbia is one of national importance, and it is hoped that the agitation of the subject, necessitated by the near expiration of the charter of the city of Washington, will cause our National Legislature to reflect upon the matter, and in the wisdom of their deliberations establish a system of government for the District of Co-

lumbia which will properly represent the fact that the seat of government of the United States is exclusively under the control of Congress, as provided for by express terms of the Constitution. For fifty years past Congress has delegated to the people of Washington the power of local legislation over matters which directly affect the property, and consequently the public interests, of the people of the United States. This is contrary to the spirit and intention of the law which established the National Capital in a district over which, by the express terms of cession and acceptance, Congress was to exercise exclusive legislation in all cases whatsoever. The District of Columbia is the Nation's Capital, its government to be controlled and directed entirely through the legislative enactments of the Congress of the people of the United States, and not by the inhabitants of the District. The people of the District of Columbia have no inherent legislative powers; they locate here under the broad clause of the Constitution of the United States, which says that "Congress shall exercise exclusive legislation in all cases whatsoever over this District." The fact that Congress ever delegated to the people of the District power of local legislation is to be regretted; for had Congress exercised exclusive legislation and appointed a board of Commissioners to administer the legislation as enacted by Congress, the condition of the Nation's Capital would be far different from what it now is.

## A City Under Affliction.

The Capital of the United States at present is a grand skeleton city and suburbs struggling under the afflictions of four different legislative and governing powers—Congress, Washington Corporation, Georgetown Corporation, and Levy or County Court—each administering different laws, often conflicting, never harmonious. Of course, as a natural consequence of such legislation, the seat of government of the great United States is in a more ragged, unfinished, disjointed, uninviting, and slovenly condition than any other same-sized Territory in Christendom, peopled by 125,000 inhabitants! More law and less government than any community in America. Had Congress never permitted subordinate legislation within the District the Capital of America

would to-day be the most attractive city and surroundings in the land, in which private wealth would vie with government in the erection of handsome buildings, magnificent residences, the establishment of scientific and charitable institutions, and general beautifying and adorning of the Capital City of our great republic.

What we now want is that Congress shall assume its proper and constitutional relations over the affairs of this District, and thus regenerate the nation's Capital from the slough of local partisan cliques and place it in the line of promotion, to become in time the first capital of the world. As the seat of government the District of Columbia belongs to the people of the United States, and Congress, as trustee of the people, should nationalize the management of its affairs; as the Capital of the Republic, this District is the ward of the nation, and Congress is the guardian appointed by the Constitution to exercise exclusive control over it. Let the Government appoint a Board of Commissioners, who are qualified by character, wisdom, and experience, to administer the affairs of the District under the proper laws enacted by Congress—such Commissioners and laws to be subject at all times to the control of Congress—and do away with all character and kinds of municipal legislative bodies within the territory selected as the seat of the national government. By no other form of government can Congress exercise exclusive legislation and nationalize the Capital of the Republic.

## In Favor of Control by Congress.

Under such a plan the affairs of the District would be managed upon a system uniform in its application; the millions of dollars' worth of Government property here would be protected and cared for by the same authority that regulated the public interests of the individual property-holders; there would be a uniform system of grades for streets and avenues, of sewerage, gas-lights, pavements, &c. In short, instead of, as is too often the case under our municipal legislation, an antagonism of interests between the city and Congress, resulting in confusion, neglect, and disorder to our streets and avenues, there would be a harmonious unity in the management of the community of interests. With remarkable unanimity the substantial citizens, business men,

property-owners, and tax-payers of the District are earnestly in favor of Congress exercising exclusive control over the affairs of the District in the manner herein indicated, believing, firstly, that it is the duty of Congress to thus exclusively exercise legislative control of the District; and also because they feel confident that the taxes collected on their property will be far more judiciously expended under proper Government Commissioners than through the manipulation of our noisy, quarreling, partisan, irresponsible local city governments. Municipal legislative government within the District of Columbia, whether one or many, always has been, is, and ever will be, in brief, an intolerable nuisance, an incubus upon the growth, development, and prosperity of the District, irrespective of the party, color, or sex who, for the time, may rule supreme in the noisy councils; not that the individual members are necessarily bad men, but the system is rotten to the very core. Our citizens remember "Plug Ugly" times, when delegations of "roughs" came over from Baltimore to interfere in our municipal elections; when firearms were freely used, human lives destroyed, and persons maimed for life. The absurdity of municipal elections and local legislative bodies within the District of Columbia must be apparent to every one upon a moment's reflection.

### Government Should Not Be Delegated.

This being the territory selected exclusively for the purposes of the United States Government, full and exclusive jurisdiction being invested in Congress over all the affairs of the District, what propriety can there be in Congress delegating to the people who choose to locate within such territory, under full knowledge that its entire and exclusive control is lodged in the Supreme Legislature of the nation, power to organize municipal governments within the territory selected for the sole purpose of the nation's Capital, and legislate, as they often do, in a manner hostile to the views of Congress, and also affecting the property interests of the United States Government located here?

Municipal elections in the District create and engender bitter partisan feeling of the most intense character, exhibiting all the worst passions of bad blood frenzied with whisky, a yearly contest in which human life and limb have often been sacrificed, and

not unlikely will happen again; and these bitter strifes are conducted yearly within the limits of the nation's Capital, over which Congress alone has exclusive legislative jurisdiction, and wherein a subordinate legislative election is as much out of place as it would be upon one of the United States naval vessels. There is no political significance in these contests, for there is no principle of republican government involved; it is simply a question of spoils. It is not a struggle for law-makers; the only issue is what set of men shall collect the taxes and disburse what is not "unaccounted for." The citizens of the District of Columbia have no political status, no voice in the affairs of the nation, and want none; they locate here with that full knowledge and understanding; this District was set apart as the seat of the United States Government, to be controlled and managed exclusively by the Congress of the nation. Then why shall Congress continue a subordinate, useless, and irresponsible power to exist within the precinct of its own absolute authority, wherein no single principle of republican government is involved, and which quite often exhibits a hostile antagonism toward the power which created it, resolutions of our City Councils against Congressional legislation on national affairs being not unfrequent?

## A Bit of Prophecy.

The substantial citizens, property-holders, business men, and tax-payers of the District, and all who have a just pride in the welfare, development, and grandeur of our nation's capital, disgusted with the abuses of local legislation, ask Congress to resume its constitutional authority over the District of Columbia and manage the affairs of the nation's capital in a national sense. Managed under the general features of Senator Morrill's bill (which provides for Commissioners to administer the laws of Congress over the District) the city of Washington and the District would march onward in the path of progress with a rapidity unknown in its past history. Instead of remaining as at present, a slough of mud, dust, filth, and general dilapidation, without proper pavements, grades, lights, sewerage, and other first elements of a modern city and surroundings, it would, under the single and responsible administration of a board of Government

Commissioners, soon develop into the grand national metropolis of our republic, attractive for legislator and citizen, sojourner and visitor from our own and foreign countries. Here would center wealth, art, culture, and the varied elements of intelligent and influential society. There would be no clashing between government and individual property interests, for both would be managed by the same authority, under the same system, for the same purpose—the best interests of the national capital. The greatness and grandeur of the national capital of our vast-spreading republic depends upon the management of its affairs; the people of the District have tried it for fifty years, with what success is unpleasantly too prominent. Now, let Congress assume control of the affairs of the national seat of Government, and "exercise exclusive legislation in all cases whatsoever over the District of Columbia."

HALLET KILBOURN.